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DE RUEHN #1183/01 1631018

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FM AMEMBASSY NAIROBI  
TO RUEHC/SECSTATE WASHDC PRIORITY 9823  
INFO RUCNIAD/IGAD COLLECTIVE PRIORITY  
RUEHDR/AMEMBASSY DAR ES SALAAM PRIORITY 6582  
RUEHLO/AMEMBASSY LONDON PRIORITY 3223  
RUEHFR/AMEMBASSY PARIS PRIORITY 3094  
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C O N F I D E N T I A L SECTION 01 OF 05 NAIROBI 001183

SENSITIVE  
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AF/E FOR SUSAN DRIANO; INL FOR LENSEY SMALLS AND KEVIN BLAKEMAN

E.O. 12958: DECL: 06/12/2019

TAGS: ASEC KCRM KJUS PGOV PHUM KE

SUBJECT: KENYA POLICE OVERVIEW, PART THREE: THE WAY FORWARD

REF: A. 2008 NAIROBI 2212  
1B. 2008 NAIROBI 2253  
1C. 2008 NAIROBI 2401  
1D. 2008 NAIROBI 2563  
1E. 2008 NAIROBI 2660  
1F. NAIROBI 458  
1G. NAIROBI 551

Classified By: Ambassador Michael Ranneberger, Reasons 1.4 b,d

11. (U) Summary: This cable is the third in a three-part series on the police in Kenya. Part one provided an overview of police structure and leadership, and assessed the strengths and weaknesses of the main police agencies. Part two summarized our current assistance to Kenyan law enforcement agencies. This cable notes challenges facing the main police agencies, progress to date on police reform, and how best to engage with the law enforcement sector here to achieve U.S. policy goals.

12. (U) Of the three major police services (the Kenya Police Service (KPS), Administration Police (AP) and Kenya Wildlife Service (KWS)), only the KWS has not been accused of committing serious human rights abuses. Allegations against the KPS and AP include torture, extrajudicial killing, rape, excessive use of force, extortion, failure to intervene, and corruption. To date, neither the KPS nor the AP leadership has undertaken any publicly known credible investigation into these allegations. The commission appointed to investigate the post-election violence in Kenya, known as the Waki Commission, recommended a number of police reforms in its 500-page report. (See ref C). Our assistance is designed to support specific U.S. interests (for example, counterterrorism and support for the goals of the Women's Justice and Empowerment Initiative) and to avoid assistance which could directly or indirectly contribute to human rights abuses.

13. (SBU) We have not yet seen significant efforts toward implementation of any suggested reforms, although the Minister of Internal Security just convened a National Task Force on Police Reform chaired by retired judge Philip Ransley (additional details to be reported septel). The commission has been directed to submit its report no later than July 31, 2009. The Ambassador has met with Ransley, and post and Task Force staff are meeting to discuss ways in which U.S. assistance and expertise can best further the process of reform.

¶ 14. (C) Following a review of the issues related to security sector reform and our current assistance programming, post has four recommendations for future engagement: first, that we continue our focus on and support to coastal, maritime, and border security elements; second, that we create an Embassy-wide standard "application" that all candidates for training should fill out and that must be submitted prior to Leahy vetting; third, that we focus our section 1207 police pillar on reform, and condition other training, especially equipment grants, on progress on key reform recommendations; and fourth, that we institute better interagency coordination and seek greater Washington input into the development of our Mission-wide security assistance policy. End summary.

#### MUNGIKI KILLINGS

¶ 15. (C) In 2007, accusations began to emerge from local human rights organizations and the media that a special Kenya Police Service (KPS) squad called the Kwe kwe (the Kiswahili word for "weed," as in weeding out bad elements from the community) was executing members of the Mungiki gang. The UN Special Rapporteur on Extrajudicial Killings, Philip Alston, visited Kenya in February 2009. In his initial report in April 2009, he asserted that police death squads were assigned to kill suspected Mungiki members, and said he took testimony from a former squad member that he and his colleagues were personally involved in the murder of 58 alleged Mungiki members. Following Alston's report, the KPS leadership initially denied that the Kwe Kwe existed, then in subsequent statements said the squad's work was necessary to

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protect the community from the Mungiki menace.

¶ 16. (U) The Mungiki began as a religious/community organization promoting a return to traditional Kikuyu values and beliefs; it morphed into an organized criminal gang and was subsequently outlawed by the Kenyan government. The Mungiki is, in fact, an extremely violent gang with both political and security sector connections. They derive most of their income through extortion, particularly in the public transport sector, and are responsible for murders, torture, maiming, and beheading victims with little provocation. Small business owners and some homeowners, especially in some slum areas in Nairobi and Central province, are also forced to pay for "protection" or face destruction of their property. The Kenya National Commission on Human Rights (KNHCR) alleges that, in 2007 and 2008, KPS officers killed more than 500 suspected Mungiki members.

#### POST-ELECTION VIOLENCE

¶ 17. (U) When the post-election violence broke out in late December 2007, the Kenya Police Service (KPS) and Administration Police (AP) were accused by local and international non-governmental organizations (NGOs) of committing serious human rights abuses, including torture, rape, extrajudicial killing, and excessive use of force. According to the report of the Waki Commission, which heard testimony from dozens of witnesses during its investigation into the post-election violence (see ref C), both the KPS and, to a much lesser extent, the AP, were implicated in using excessive force to suppress rioters, in shooting unarmed citizens, and in sexually assaulting women. In particular, the KPS' General Services Unit (GSU) and the AP's Rapid Deployment Unit (RDU), both paramilitary units, were accused of using excessive force and extrajudicial killings of civilians.

¶ 18. (SBU) However, the police have also been victims of civil disobedience and on more than one occasion have been overwhelmed and violently attacked. Angry mobs have reportedly killed police officers, including in an incident when hundreds of rioters stormed an arsenal to obtain arms for use in inter-tribal clashes. Underlying public sentiment

is a deep distrust of the police, which can easily lead to mob action and violence that prompts ill-trained and inexperienced officers to react adversely and thus fuel further violence and mistrust. In the long term, the cycle of mistrust and violence has resulted in allegations of sustained human rights abuses by members of the security forces.

#### RECENT PROBLEMATIC OPERATIONS

**¶9.** (U) In March 2008, the Kenyan military and AP began an operation in the remote Mount Elgon area of western Kenya designed to neutralize the Sabaot Land Defense Force (SLDF), a local militia group that has been terrorizing the population since 2006. About one month into the operation, allegations of serious human rights abuses by both police and military began to emerge, which are more extensively covered in ref B.

**¶10.** (SBU) In late October 2008, Army, KPS and AP personnel were deployed to the towns of El Wak and Mandera, both located near Kenya's border with Somalia. Their mandate was to provide security relief to the area and to seize illegal weapons that were fueling local inter-clan conflict in the area. (See refs D and E). Local residents alleged that KPS and AP forces used excessive force to induce them to reveal weapons caches or to turn in weapons. Poloffs visiting the area spoke to local AP and KPS officers about the allegations. They did not deny the allegations, but stated that the operation was necessary. To date, neither the KPS nor the AP have undertaken a publicly known credible investigation of the allegations.

#### RESPONDING TO PROTESTS AND CRIME

**¶11.** (U) Local media report that police frequently use

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excessive force in responding to protests and crime, especially in Nairobi. In March 2009, after unknown assailants murdered two human rights activists (see ref F), students at the University of Nairobi protested. Police allegedly shot and killed one student during the protest, which had turned violent. Three police officers were arrested in the case, but subsequently released without charge after forensic reports indicated the bullet recovered from the student's body was not fired from a standard police weapon. The student's death, as well as the murder of the activists, remains unsolved. On April 22, seven carjackers were fatally shot by police on Lunga Lunga Road in Nairobi. In recent months, police have shot and killed men accused of stealing cell phones from pedestrians along Uhuru Highway, one of Nairobi's main streets.

**¶12.** (C) The use of excessive force highlights several key weaknesses in the way the KPS in particular is managed. There is essentially no oversight of police conduct, either via internal or external mechanisms. A Police Oversight Board formed in September 2008 has not received sufficient funding and has reportedly succumbed to political infighting. Police are poorly trained and suffer from low morale and a very poor public image. The public in general, and the police in particular, have very low confidence that Kenya's backlogged, corrupt, and inefficient legal system can deliver justice to crime victims. The Police Act of 1970, though revised in 1988, is in desperate need of comprehensive revision. For example, police are authorized to shoot a fleeing felon in the back. Public lack of faith in both the police and the justice system also feeds vigilantism, a common problem in both urban and rural Kenya.

**¶13.** (U) Corruption is also rampant in the police services. Residents of Nairobi's Mathare slum allege that most people who are arrested there (for assault or rape, for example) are offered the chance to buy back their freedom. Only those who are unable to raise the cash will go to jail. In some cases,

the victim who made the complaint will then be arrested and charged with the crime of giving false information to a police officer, thus giving officers the chance to collect twice on the same case. The KPS Traffic Police routinely put up roadblocks in Nairobi and on major roads throughout the country. An alarming number of motorists stopped at these roadblocks are expected to pay cash bribes and frequently do so. Commercial trucks and matatus (public mini-buses that form the heart of Kenya's public transportation system) are favorite targets and consider bribes to the police a routine cost of doing business.

#### RECOMMENDATIONS

¶14. (C) In two areas in particular, we should continue what we are doing and what is working well. Namely, we should continue our support for, outreach to, and cultivation of those services involved in border, coastal, and maritime security. Our engagement in these areas is in our direct U.S. national interests (promoting regional peace and security and combating terrorism and piracy), and the GOK has demonstrated its desire to collaborate in these areas.

¶15. (C) In an unprecedented development, the KWS and AP are working closely together on border security, and they are keen to learn from and collaborate with us. In addition, the decision to focus on maritime security and police investigative capacity was the product of a thorough assessment and subsequent review coupled with multiple meetings with Commissioner Ali, AP Commandant Mbugua, and others. Lastly, with regard to vetting, post has implemented a policy that exceeds minimum standards, and we will continue that. However, post also plans to create a Mission-wide "standard application" for all potential training candidates to complete prior to initiation of the Leahy vetting process. Information contained in the standard application will help in identifying early individuals who may have a "hit" in a post database.

¶16. (C) Our second recommendation is to be prepared to focus a new assistance program on police reform when the National

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Task Force on Police Reform recommends meaningful reforms and the government demonstrates willingness to implement them. The Task Force has been directed to submit its report no later than July 31, 2009. The Ambassador has met with the Task Force chairman, and post and Task Force staff are meeting to discuss ways in which U.S. assistance and expertise can best further the process of reform.

¶17. (C) While the proposed 1207 police pillar will focus on reforms in the area of police-community relations that were negatively affected by the post-election violence, other reforms are also urgently needed. For example, security sector assistance could address the need to strengthen conflict resolution mechanisms and develop an early warning response system for police. We might provide technical experts to assist in drafting a modern code of conduct and use of force policy for both the AP and KPS. Small grants for local NGOs to engage police in peace-building and reconciliation efforts could help promote a more harmonious civilian-police relationship, particularly in communities most affected by the post-election violence.

¶18. (C) While current equipment grants are for non-lethal equipment i.e. cyber forensics tools and boats), we may wish to consider conditioning further training and equipment grants on implementation of key reforms. Equipment in particular, which is universally viewed with enthusiasm by police agencies, should be conditioned on reform implementation. The most critical police reforms, in addition to revising and implementing a new code of conduct and use of force policy, include the establishment of effective internal and external oversight mechanisms and the creation of an independent Police Service Commission, which would regulate

hiring, promotions, salaries, and pensions.

¶19. (C) Our final recommendation, which we are undertaking, is that while focusing on border and coastal security, we institute better inter-agency coordination at post and with Washington. A review of our training offerings across agencies suggests there may be some duplication of substance and that some police personnel may be recipients of multiple trainings, not necessarily as part of a coordinated professional development program. The field is particularly crowded in the area of counter-terrorism courses. While some of the individuals trained have been able to use the training in follow-on assignments, informal efforts to follow up with alumni of our programs indicate that not all are able to practice what they have learned. KPS management in particular is prone to implementing arbitrary personnel transfers that undermine our training investments.

¶20. (C) Other obstacles to the effectiveness of training include an uncooperative KPS Commissioner, politicization of leadership and rivalries among law enforcement agencies, inadequate GOK funding for law enforcement agencies, and the continuing lack of anti-terrorism or anti-money laundering legislation. With the exception of a maritime assessment (see para 15), no comprehensive security sector assessment has ever been undertaken, although the Task Force on Police Reform has been directed to assess capacity to respond to critical threats.

¶21. (C) The DS/ATA program director at post has worked on developing a comprehensive database of all Kenyan personnel trained. This project needs to be completed and operationalized as soon as possible. We are also seeking greater control over candidate selection to ensure candidates are merit-based and to eliminate as much as possible participants whose deployment histories raise questions about their conduct. In the continued absence of credible investigations by the KPS and AP leadership and given the alleged pattern of abuses, we face a significant challenge to minimize the risk of having trained police personnel who commit abuses. A mitigating factor rests in the focus of the ATA programs. ATA courses target maritime security personnel, police forensic investigators, newly formed AP/KWS border patrol units and other specialty units that have not been implicated in human rights abuses.

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COMMENT

¶22. (C) There are important U.S. national security interests at stake in Kenya. Security sector assistance is a key means to advance those U.S. national security interests. The challenge we must grapple with is how best to use security assistance to engage on areas of interest to us without in any way contributing to human rights abuses, and how best to use current and possible future assistance to press for and encourage meaningful police reform. End comment.

RANNEBERGER